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Oakland's nascent special prosecution team uses deputized city attorneys to go after quality-of-life crimes. Some think teaming up might become more popular, especially among resource-starved cities.

LAWYERS WITHOUT BORDERS: Clockwise from top center: Deputy City Attorneys Mario Jovel, Elias Ferran and Reve Bautista are supervised by Rocio Fierro, and were deputized to prosecute criminal offenses by Chief Assistant DA Nancy O'Malley's office.



Image: Jason Doiy/The Recorder

Crossing Into Criminal City attorneys go after quality-of-life crimes

By Evan Hill/Recorder Staff Writer

In Oakland, where a recent traffic stop turned into a gunfight that cost four police officers their lives, broken windows probably do not concern residents as much as the homicides that have plagued the city – 124 in 2008 alone.

Yet the quality-of-life policing philosophy that gained prominence in New York City and gets its name from that aspect of urban decay is the foundation for a new unit in the city attorney's office that is targeting infractions and misdemeanors.

The "broken windows" theory, which proposes that relatively low-level community disorder breeds serious crime if left untreated, has taken hold in Oakland law enforcement, and City Attorney John Russo's three-lawyer special prosecution team, now in its sixth month of operation, represents one arm of the new approach the city's taken in the last few years.

"I think most of us are convinced that low-level crimes become high-level crimes," said Rocio Fierro, who supervises the team and serves as general counsel to the Oakland Police Department.

"Oakland shouldn't have low standards. We shouldn't be willing to accept low standards of behavior and disorder."

Officials in Oakland and Alameda County signed off on the prosecution team at the beginning of October, and since then, the lawyers have charged roughly 270 cases. The three, who were deputized by the Alameda County district attorney's office to prosecute criminal offenses, have focused their resources so far on prostitution, petty theft, vandalism and drugs, according to statistics assembled for *The Recorder* by the city attorney's office. To a lesser extent, they've also brought cases for trespassing, public drunkenness and ticket scalping.

As of early April, the team had filed at least 70 prostitution cases, about a quarter of its workload, while a Feb. 28 police raid on a cockfighting match spawned 70 prosecutions of its own. The team has also filed at least 35 theft cases and more than 30 for the use or possession of drugs or paraphernalia.

The cockfighting bust, which made headlines in the Bay Area, is being prosecuted by Deputy City Attorney Elias Ferran, who is assigned to the OPD command that encompasses East Oakland. Ferran and his colleagues, Reve Bautista and Mario Jovel, all formerly worked for San Francisco District Attorney Kamala Harris and were hired by the city attorney specifically for the special prosecution team.

Bautista and Jovel were both veterans of the San Francisco DA's office by the time they lost their jobs to city budget cuts in June. Ferran, who passed the bar in 2007, was hired shortly thereafter to be a "post-bar-clerk" who focused on graffiti, the DA's office said. Ferran said that during his six-month contract he prosecuted cases in traffic court and infractions "involving homeless people [and] drinking in public."

Academics still disagree over the merits of the "broken windows" theory.

Robert Weisberg, the director of Stanford Law School's Criminal Justice Center, said that while many attributed a steep drop in New York City's crime rate in the 1990s to the adoption of so-called "community policing" and the prosecution of quality-of-life crimes, some academic studies have said the decline was simply the result of more police on the streets.

Similarly, the Oakland plan "means you have more DAs, in effect," he said. "The increase in the number of quasi-prosecutors may only mimic that effect [of more police] if it creates some sort of more visible law enforcement presence or sends out the message that you will be caught."

In Oakland's program, each attorney is assigned to one of the police department's three geographic commands. Typically, according to those involved in the process, a case will be built on complaints from neighborhood groups, which the attorneys meet with often, or through police officers telling attorneys what they notice while working a beat.

In general, Russo said, the team aims to change defendants' behavior or "educate" them, and punishment usually involves community service rather than time behind bars. In one case Russo's office pointed to, a construction worker was convicted of petty theft for stealing books from Barnes & Noble. Bautista, one of the deputy city attorneys, contacted a local church, and the man was sentenced to 50 hours of work that included painting a baptismal pool, replacing worn tile in the church sacristy, and repairing water-damaged bathroom walls.

Russo, for his part, said that if the "broken windows" approach worked in New York City – where he grew up – it can work in Oakland.

Both he and Nancy O'Malley, Alameda County's chief assistant district attorney, said Oakland's approach began to shift after the election of Mayor Ron Dellums in 2006. Early the next year,

O'Malley recalled, she and her boss, District Attorney Thomas Orloff, sat down with Dellums, Police Chief Wayne Tucker, and Fierro to discuss new law enforcement strategies.

Local neighborhood groups had been complaining that Oakland police, saddled with violent crime, were not giving priority to low-level offenses, O'Malley said.

Tucker pushed for the formation of a team in the city attorney's office to prosecute the quality-of-life cases that would sprout from new efforts in community policing, Russo said. Though Tucker resigned in February, Deputy Chief David Kozicki, another early backer of the special prosecution team, has assumed the role of the team's police pointman.

In the past, Kozicki said, police officers would respond to a quality-of-life crime, such as vandalism, loitering or graffiti, with a citation, "and it would go over to the DA's office and ... I don't want to be critical of the DA's office because they have such a tremendous amount of work, but [such a citation] was triaged accordingly."

"We needed a legal advocate who could go into that system and advocate on behalf of these neighborhoods."

Kozicki said he's happy with the team's efforts so far, and that they have contributed to what the Oakland police department claims is a 23 percent drop in crime so far in 2009 compared to the same time last year.

Though the use of city attorneys to prosecute criminal matters has been adopted elsewhere in California, it hasn't caught on with two of the Bay Area's larger cities. A spokesman for San Francisco City Attorney Dennis Herrera said the office, which has pursued civil injunctions against gangs, has not prosecuted any criminal cases during Herrera's tenure. San Jose City Attorney Richard Doyle said that while his lawyers prosecute those who violate municipal laws, they do not handle the typically more serious offenses under the state Penal Code, which go to the Santa Clara County district attorney.

But given the tight local budgets across the state, Doyle said, "I think you're going to see city and county leaders seeing how they can combine resources ... and this may be one area to look at."